

A response to the
HMT's Consultation and call for evidence
on
Ban on cold calling for consumer financial services and
products

September 2023

UK Finance is the collective voice for the banking and finance industry. Representing more than 300 firms, we act to enhance competitiveness, support customers, and facilitate innovation.

We are pleased to respond to HMT's [Consultation](#) on a proposed Ban on cold calling for consumer financial services and products.

Our members are supportive of HMT's efforts to protect customers from fraud and welcome measures designed to protect elderly and vulnerable customers and empower consumers to terminate and report unsolicited calls.

However, there are some issues with the current wording of the proposal that may create adverse effects for customers and cause harm to them. Additionally banning all unsolicited calls may create issues for our members as they work with their customers in fulfilling their obligations under the FCA's Consumer Duty requirements.

HM Treasury may also want to consider alternative solutions. For example, one member has proposed, that a simple, effective, and standardised mechanism of deploying reverse identity checks could offer a better solution and avoid the unintended consequences of a blanket ban on cold calling, such as those described below. If customers expect their bank to provide a reverse ID service, it will in turn help to reduce fraud and scams in telephony channels.

However, as criminals impersonate a range of firms the pursuit of a reverse ID check will need to be targeted and flexible such that it is proactively adopted by those the range of firms that are routinely impersonated. There have been examples where the impersonation has not arisen from banks. In addition, the process for a reverse ID needs to be communicated clearly and consistently, to avoid criminal manipulations as an online check where old data is stored online and can be used by criminals to imply credibility.

Responses to Questions

Question 1: *In your experience, what are the main harms caused by cold calling to market financial services and products?*

There are a few main harms caused to consumers by cold calling to market financial services in the UK. The first of these is scams which come in two forms, Investment Scams (this includes crypto scams) and impersonation scams. These scam types utilise pressure to socially engineer consumers into making payments for fake investments, often preying on consumers who want additional revenue by offering a one-off opportunity to make huge returns or manipulating consumers by inducing fear to move savings into “safe accounts” or otherwise risk losing their life savings due to fake “fraud breaches into their bank accounts” with criminals impersonating trusted banking brands as part of this type of scam. Another common tactic used by fraudsters is telling individuals they are owed compensation, and then ask for bank details or a processing fee to arrange “payment”.

Another harm we note is that the prevalence of cold calling reduces the ability for consumers to discriminate between legitimate callers and criminals trying to socially engineer them. According to the Hiya Global Call threat report Q1 2023 in the UK, nearly half of unwanted calls are actually fraud. And for the second quarter in a row, the UK’s fraud rate stood at 13%, which is the highest fraud rate in Europe.

There are other harms from calls that impact our members, including vishing and impersonation. UK Finance has worked with Ofcom to create a reduction in the volume of calls that impersonate our member banks, through the DNO list, this has had a significant impact on the volume of bank impersonation scams. The DNO is an interim mitigation whilst Ofcom progresses proposed spoofing mitigation, which we eagerly await.

Question 2: *Do you agree that the cold calling ban should capture live telephone calls to an individual?*

We agree that the cold calling ban should capture live telephone calls to an individual. Telecommunications is a large enabler of Bank and Police impersonation and Investment scams and so should be captured within the cold calling ban. Live phone calls are the most prevalent source of social engineering that results in financial losses overall. However, to mitigate the wider harm we recommend that the ban is wider than just Financial Services and Financial Promotions. The collective loss of fraud and scams was £1.2bn in 2022. One member determined that 70% of unauthorised payment fraud involved a phone call, which resulted in over 1000 cases in the first quarter of 2023.

A good example of this was the [iSpooof](#) case. In November 2022, the UK’s biggest ever fraud operation brought down a criminal group running an online service –iSpooof– that enabled number spoofing calls to be made. The service was used to attempt to steal personal information, impersonating trusted organisations such as banks and had additional features like Interactive Voice Response (IVR) call handling with custom hold music and call centre background noise. Victims contacted would be instructed to share six-digit banking passcodes with the scammers, allowing

them to access their bank accounts. The service facilitated around 3.5 million spoofed calls between June 2021 and July 2022 in the UK, with 350,000 calls lasting more than one minute.

The iSpooof case demonstrated the massive scale of these phone calling operations. With this type of technology available to criminals, and in the future relying to a greater extent on Artificial Intelligence, they can engage consumers, impersonating legitimate financial service providers as part of an initial contact. This allows the criminals to socially engineer victims into expecting further calls with multiple ruses, to build confidence, and then subsequently propose that the victim makes an investment once trust has been built.

It is important however to note that, whilst we do believe that banning live telephone calls to individuals would prevent all forms of fraud, some customer groups will be more affected than others. For instance many older and vulnerable groups are much less likely to have digital access and have a strong bias towards telephone communications. The phrase “cold calling ban” may also be unhelpful as it may lead customers to think that their bank will never call them at all, which is not accurate and could have damaging consequences with customers not answering or ignoring any “call to action” in legitimate calls.

The ban should also not cut across the clarity recently provided by the [FCA](#) in relation to bank’s ability to contact customers to comply with their obligations under the Consumer Duty, for example, to inform customers of the best rates available on deposit accounts.

Question 3: *To what extent does direct unsolicited marketing of financial services or products take place through live, electronic communications, other than telephone calls? What is the impact if these communications are not captured by the cold calling ban?*

The ‘telephone calls’ definition should include Voice Over IP calls. The iSpooof case outlined above demonstrates fraudsters’ capacity to use online services to engage victims. Across Q1 2023 WhatsApp was increasingly reported as an enabler of investments by our members, which could be via live contacts. There is also the potential for chat sessions via websites or platform which are live contacts, however this is not currently known to be a prevalent approach used by criminals. We note that where alternative communications are not captured by the cold call ban the criminals will migrate to these other forms of communication.

We would also like to point out that whilst we do not have any concrete data to represent the volumes of direct marketing using digital channels, we understand that customers are much less persuaded by communication of this nature (if I’m not interested, I’ll just delete or ignore it). So we would not suggest that digital channels should be in scope (notwithstanding the fraud/scam potential), although legislation obviously would not stop fraudsters making contacts anyway. Furthermore, older and/or vulnerable groups who may need the protection from these scams are less likely to have digital access.

Question 4: *Are there existing safeguards in place via social media organisations which already offer protection against fraudsters using social media voice and video calls for the purposes of cold calling?*

At least one platform (WhatsApp) and one handset provider that we are aware of allows consumers to Silence Unknown Callers, which is designed to give consumers more privacy and control of their incoming calls.

Question 5: *To what extent does marketing of financial services or products take place through door-to-door selling?*

Door to door selling, is not prevalent amongst our membership.

Question 6: *How could a cold calling ban be made to be effective in preventing door-to-door selling for financial services and products?*

We believe that there is a need for a mutual authentication process to reduce the opportunities for criminal impersonations. Alternatively, there should be a campaign encouraging consumers to independently validate the contact that is being made providing information on how this can be done.

Question 7: *Are there other forms of cold calling aside from electronic communications and in person selling that cause harm to consumers?*

Our intelligence confirms that WhatsApp and smishing have been used to engage victims of investment scams.

Question 8: *Should sole traders and other types of partnerships (outside of limited liability partnerships and Scottish Partnerships) be captured in this ban on consumer financial services and products?*

We support the Treasury's desire to avoid unintended consequences of the proposed ban impacting the ability of financial services firms to use business to business (B2B) sales and marketing channels. There are wider read-across issues regarding the regulatory perimeter. Some members do not differentiate in their relationship management of smaller business customers by legal entity type, therefore any ban applying to Sole Traders or Partnerships would inadvertently extend to wider B2B marketing. This would be counter productive.

Many members use unsolicited contact as an important means of business customer engagement, including product awareness, account servicing, B2B recruitment both for corporate and Small Business Service (SBS) cards and merchant acquisition. Removing the ability to prospect for new customers would severely impact competition. Sole Traders and Partnerships benefit from proactive contact from their financial services providers which can help to meet their needs and support their growth. The clearest way to exclude cold calling for B2B purposes from the ban would be to use the definition of 'consumer' within the Consumer Rights Act.

Members agree that this proposed cold calling ban requires clarification as to its application to existing customers, and how an 'existing customer' should be defined. There is ongoing customer expectation of proactive support from their relationship manager. Any ban which would limit the ability of the bank to contact their customers regarding payments, financial assistance, debt consolidation, product suitability, product expiry or more widely in relation to account management would not support our members' commitment to providing their customers with a comprehensive, responsive and supportive financial services offering.

Cold calling is also an important channel for merchant acquisition, for the wider industry, including payment facilitators. We would argue in relation to question 10 enabling card acceptance, is clearly for proper business purposes and will not be applicable for consumers, so this activity should be excluded from the scope.

Question 9: *Do you agree that the scope of the ban should include the services and products set out in the section above? Are there any other products that should fall within the scope of the proposed ban on consumer financial services and products cold calling?*

Yes, we believe that the ban needs to consider both regulated and other activities outside the regulatory perimeter as we understand the concern is in relation to unintended customer detriment and confusion caused by cold calling. However, we feel there are certain circumstances where the proposed ban does restrict the opportunities to offer products within financial advice that could benefit a customer in the longer term, particularly older and/or vulnerable customers who as noted earlier show a preference bias for telephone communications. Lenders do have legitimate reasons to contact customers via telephone. For example, financial services firms may need to maintain existing relationships, where customers are actively relationship managed as well as customers in financial difficulties in order that lenders meet their duty of care to customers.

No additional products that should fall within the scope of the proposed ban - our members seek a stable regulatory environment in which to operate, rather than one that is constantly iterating.

Question 10: *Are there any consumer financial services and products which should not be captured by this ban?*

Our view is that existing service calls for mortgage customers, i.e., customers in financial difficulty or customers coming to the end of their existing product, requiring discussions about maturity and product options should not be captured by this ban. Lenders currently allow customers to decide their marketing and communication preferences and this information is covered in the product Terms and Conditions. It would be helpful if the rules provide a clear dichotomy between sales and marketing and customer servicing calls. We note the importance of lenders reaching out to customers in financial difficulty where a new product may be offered as a solution.

Within credit card merchant acquiring businesses, we believe that outbound calls should be permissible regarding the provision of POS (Point of Sale) devices. This should not be in scope as we do not see a particular fraud and scam risk from this activity.

We also seek clarity that the ban, as well as the awareness campaign for this ban, will not impact businesses' ability to contact and call consumers for fraud and crime prevention purposes or consumers' acceptance of receiving calls from known financial services providers for fraud and crime prevention purposes. The prevention of business capability to do this will increase harm and will increase the financial gain available to criminal enterprise.

Question 11: *Do you have any views on whether to include an exception in this cold calling ban, for situations where the caller is an FCA or PRA authorised business and there is an existing client relationship between the caller and the recipient, such that the recipient envisages receiving cold calls?*

To ensure that the ban robustly maintains its fraud prevention benefits, exceptions to the ban must be carefully considered. Any exceptions to this ban have the potential to erode the fraud prevention benefits envisaged, as fraudsters change tack to operate within the grey areas of any exceptions. If exceptions are made, we are likely to experience a subsequent rise in impersonation scams of PRA and FCA businesses. Any exceptions to the ban are also likely to dilute any strong clear messaging on the ban to the public, leading to confusion on the exceptions. This will either result in consumers no longer taking calls from the firm, which could impact fraud prevention activities, and/or consumers ignoring the ban and continuing as is. It must also be acknowledged that there are current tools in place to support consumers in identifying FCA and PRA authorised businesses to avoid scams such as the FCA Register and PRA list of banks. However, we still see high volumes of investment scam calls, as often consumers are not aware of or do not think to use these tools, nor is there any way for them to connect the calling party to the company, to verify the legitimacy of the business.

However, there are two major exemptions that we support as we believe that the benefits to customers outweigh the potential dilution of a ban, particularly when acknowledging that that some vulnerable groups and older people have a bias towards telephone communication:

1) Carrying over the 'existing customer' exemption

The exemption for contacting existing customers in Regulation 21B(3) of the Privacy and Electronic Communications Regulations (PECR) should be included in the new ban, but its scope broadened to include products and services other than just occupational pension schemes or personal pension schemes.

Where the customer's product package includes relationship management services, firms will need to continue to make calls. In a relationship management context, where it is part of a firm's usual contact strategy to make telephone calls to customers to discuss their current financial situation, this could include various products and services being discussed. While currently permitted, this could be considered unsolicited and inadvertently fall in scope of the future ban. An exception for existing customers would therefore be appropriate to enable the continuation of relationship banking, where a firm is acting in accordance with a customer's reasonable expectations for an agreed relationship managed service model. This would align with the current position taken in respect of cold calling of pensions.

Beyond relationship banking, it is critical that firms be able to maintain contact with existing customers to support them in making good decisions to achieve their financial objectives. There are

a number of reasons why firms need to contact existing customers and the majority of these use cases will remain critical to keep a customer informed about their financial products. In addition to providing information on existing products, we would advocate for firms to retain the ability to offer new products and services within the existing regulatory parameters relating to marketing preferences, which are under the customer's control. There are also concerns that the current language could hinder lenders from fulfilling their responsibilities under consumer duty, such as informing customers about better deals or alternative products particularly for those in financial difficulty.

It is also necessary to maintain a broad interpretation of 'existing client relationship'. It is appropriate for firms to contact individuals who have initiated contact with a firm, for example by requesting product literature, a product quote or calculation, or commencing a product application process. In such cases, a client relationship has not yet been finalised, but firms can still play a key role in supporting individuals' (particularly vulnerable individuals') understanding of complicated financial products and explain the next steps in lengthy application processes. For example, many equity release providers offer calculation tools to estimate the funds that can be unlocked from the value of property. While equity release can only be sold on an advised basis, product providers can provide valuable assistance to individuals by explaining the product and assisting them to obtain advice.

There is also an important point of ambiguity in the current exemption in Regulation 21B (3) of PECR that should be resolved, both in that provision and in the forthcoming new prohibition provision. At present, the exemption provision refers to a situation where the "caller" has an existing relationship with the customer. It is unclear whether this means that the customer must have a relationship with the *legal entity* whose employee is making the call, or whether the caller can be the firm as a whole, including any *related companies*.

In financial services, it is very common for different types of financial product – or indeed substantively the same type of product – to be contractually entered into by different group entities. This is due to a mix of regulatory, business planning and merger/acquisition historical reasons. Customers are generally unaware of which precise legal entity has issued the product(s) they hold, considering their relationship to be with the firm / brand as a whole. As such, an approach whereby only the same legal entity can call customers would put firms with more complex corporate structures at a disadvantage relative to those that have a simpler structure, for no clear policy purpose.

So it should be clarified in Regulation 21B (3), and in the new cold calling prohibition provision that the term 'caller' refers to the legal entity and any related group entities.

(A similar point of ambiguity exists in the electronic direct marketing rules in regulation 22 of PECR, with ambiguity of the meaning of the word 'person'. We are pursuing this issue with DSIT officials as a part of the Data Protection and Digital Information Bill process.)

2) Scope of 'direct marketing'

We also recommend a clarification of the scope of the term 'direct marketing'. Paragraph 4.5 in the consultation paper identifies the potential for tensions between a ban and firms' Consumer Duty obligations, but states that the proposal would not in fact lead to tensions.

Under the Consumer Duty, firms will at times need to contact customers, irrespective of their marketing preferences. Examples include:

- Making customers aware that they are eligible for a better rate.
- Offering customers an interest free period on their overdraft to help them manage the cost-of-living crisis.

Recently government and regulatory interventions envisage lenders using a combination of communication methods to raise awareness and inform Standard Variable Rate (SVR) customers that they could transfer to another product. Contact could be by a range of channels or combinations of channels including by letter, email and phone call. Given there are expectations and requirements (for example under Consumer Duty) on lenders to inform customers of other options, contacts for purposes such as this ought not to be regarded as cold calling.

There has historically been considerable uncertainty over tensions between the PECR rules for electronic direct marketing and FCA's Consumer Duty expectations that firms provide certain information to customers. This uncertainty has been reduced by the ICO's ['regulatory communications'](#) guidance and the recent joint [ICO/FCA letter](#) on this topic.

However, there are points of uncertainty, still, which we will be raising with regulators. In any event, although the recent guidance is helpful, the passage of legislation provides an opportunity to achieve greater certainty. It should be clarified in the text of the legislation that the term 'direct marketing' in PECR does not include communications that are necessary to comply with regulatory requirements. We strongly believe this should apply across PECR as a whole.

Question 12: *Do you agree that the proposed approach achieves the aim of restricting unsolicited direct marketing calls in relation to financial services and products, bar the exceptions outlined, without restricting legitimate non-marketing calls?*

For regulated companies that follow legal requirements, the proposed legislation will achieve the aim of restricting unsolicited direct marketing calls in relation to financial services and products.

However, as mentioned in question 10, from a fraud prevention perspective it is important that the approach does not restrict or prevent legitimate calls. In its current state we believe the proposed legislation will lead to substantially greater instances and levels of customer harm than it prevents, particularly for mortgages. During the lifecycle of a mortgage there are occasions where firms will contact customers in relation to an existing product- for instance to make them aware they are on an SVR, and they could move to a cheaper product. This could potentially be viewed by customers as 'attempts to sell them products' when firms are in fact trying to fulfil their Consumer Duty obligations and provide them with good outcomes.

The value of this approach is also dependant on the success of the campaign in delivering an awareness that ensures messaging of the ban is clear and effective to consumers at all levels (particularly for vulnerable customers). We also believe that a strong campaign would help protect against criminals calling under the guise of a legitimate reason during the initial part of the call, and then later. once the confidence of the victim has been gained, subsequently being sold fake financial

products. The approach of making multiple contacts has previously been seen in investment scams, in particular where the victim leaves their contact details and the criminals makes subsequent calls, sometime several days later before asking them to move funds. It is important that the campaign highlights examples where a conversation changes purpose and make initial contact under a legal guise only to later ask for money or information illegitimately on a subsequent call.

Question 13: *Do you have any views on the enforcement mechanism set out in paragraphs 4.11 and 4.12 above?*

Our view is that the impacts would be based on whether the previous consent to receiving calls for servicing remains valid and clarity on how long consent lasts or if a revisit of the consent to the full mortgage book of customers is needed to be re-managed.

Question 14: *How else can the government best ensure consumers are aware of the ban?*

To ensure that consumers are fully aware of this ban and of the protections the new ban offers them, a large-scale awareness campaign is needed with a short, concise strap line to ensure the ban is effective and delivers consistent outcomes for consumers.

Lessons for success can be learnt from the “don’t share your pin” campaign co-ordinated by Take 5 which was repeatedly deployed across various media types on a large scale (TV, Online advertisements, Billboards) as well being supported across the industry to successfully embed a simple message on consumer safety within the public consciousness.

1. Co-ordinated Message

To ensure that consumers are aware of the ban, a simple strap line message needs to be publicised across multiple marketing channels repeatedly and on a large scale, to ensure that the message is entrenched into public consciousness.

2. Industry Engagement

To ensure consumers are fully educated, consumer telecommunications companies (landline and mobile providers) should be mandated by the ban to deliver clear guidance to their customers on the new protections the ban offers them, as part of their commitment, supporting Action 9: Increase Fraud Awareness in the telecommunications fraud charter.

Question 15: *What are the key considerations when designing the legislation to ensure that it is clear and impactful for the public?*

It is important to have clear guidelines set out in simple language on what key messages/wordings firms should be using when approaching customers via a call. As previously stated, the design needs to be careful to ensure that there are no unintended consequences which could have the reverse impact on customers and actually cause detriment. This is of particular concern to parts of the firm that provide debt support and forbearance where they may need to proactively contact customers

and may offer alternative financial products. With the implementation and obligations under Consumer Duty, this is even more important. Customers should be clear that firms are still able to telephone customers for legitimate business purposes, which might include bringing attention to other products and services. Examples of contacts which we would consider very important for customers (and which members would be concerned if they were prevented from making) includes:

- Retention contacts (e.g., we have a new/better product for you)
- Service related (e.g., did you receive your Offer documentation?)
- Warning of fraud/potential fraud (e.g., we need to check this transaction with you before we release your money)

On the other side it is critical to have a clear definition of cold calling for financial services products that fully encapsulates any unsolicited call that subsequently results in the opening of a payment product or the moving of money by the receiver. This clarity of the definition ensures that a wider scope of scams (advanced fee, investment, and financial services impersonation) are caught by the ban. We recognise that by diluting the definition and scope with too many exceptions, the expectation could fall on the consumer to become an expert on cold calling policy, shifting the onus away from telecommunication companies and their responsibility to protect their customers from fraudulent activity through clear and consistent education which will lead to good outcomes from consumers. A clear definition and message will ensure that consumers have a clear understanding of the ban:

'you should never receive a cold call from anyone which results in you opening new payment products or moving your money.'

We believe that the exceptions that we have mentioned, and the definition above strike a balance between protecting customers from fraud whilst also allowing firms to carry out their Consumer Duty obligations. As mentioned in questions 10 & 14, it is critical that this ban is supported by a strong awareness building campaign with a clear message which can be repeated frequently across various mediums to ensure consumers understand the controls.

Question 16: *In your experience, how could firms' business models be affected as a result of the ban?*

Our view is that the current wording will restrict the opportunities for lenders to offer products within financial advice that could benefit a customer in the longer term. There could also be potential restrictions to any future mortgage business development.

Question 17: *Are you aware of any groups of businesses, organisations and/ or individuals that will be particularly affected by these proposals?*

We believe that brokers will be impacted by not being able to make cold calls, as will MPPI companies and firms supporting Mortgage Prisoners. With the current market conditions, including rising cost of living and increasing interest rates, being in a position to contact these prisoners should they be in a position to change to a lower interest product would be key, especially with Consumer Duty in consideration.

Within credit card merchant acquiring businesses, outbound calls may be made regarding the provision of POS devices. As we note above this should not be in scope as we do not see a particular fraud and scam risk from this activity.

Question 18: *What impacts would you expect to see on persons with the protected characteristics mentioned above as a result of a ban on cold calling for consumer financial services and products? How can the government design the ban to promote positive impacts and mitigate any disproportionate impacts on persons sharing protected characteristics?*

We look forward to working with government, and other actors such as telecommunication companies and behavioural psychologists to design an effective promotional campaign.

Question 19: *Do you have any other views or information the government should consider in relation to the proposed ban on cold calling in relation to financial services or products?*

We believe the ban could provide a positive customer communications opportunity if exceptions are limited to those that we have outlined. Our view is that more clarity is required around unsolicited calls in relation to products made to existing customers compared to new/potential customers. It would also be beneficial if financial companies work on introducing a potential process that involves authentication to communications to enable cold calling via agreed customer security process. In order to truly mitigate criminals using calls as a primary social engineering approach there is a need for mutual authentication and or a validation process for phone calls. Another potential approach would be detecting and blocking spoofed numbers. We would welcome sight of the suite of evidence provided to Ofcom in their recent consultation [Calling Line Identification](#).

We would also like to see clearer definition of the objective– (is it to stop cold-calling to prevent mis-selling or to prevent fraud/scams, or both?) noting that FCA rulebooks already include rules around direct marketing.

Finally, it is important to note that this “ban” will not eradicate scams and we would make the general point that comprehensive regulatory and legislative change is required to be placed on all participants in the fraud and scams ecosystem, including telecommunications operators so that they are required to take preventative action and to change existing practices. Including these sectors in supporting the communication of the ban is imperative, as they are part of the criminal fraternity’s methodology when targeting victims, so they should make a financial contribution to the anticipated consumer education campaigns alongside firms that are routinely impersonated by criminals.

We would welcome further engagement with HMT as it develops legislation to support the proposed ban on cold calling in financial services and to evidence the wider harms that can emanate from telecoms providers and how they can be involved in this important initiative.

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